

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE UNITED HERE NATIONAL :
HEALTH FUND; TRUSTEES OF THE UNITED :
HERE NATIONAL RETIREMENT FUND; and :
TRUSTEES OF THE LUGGAGE WORKERS :
UNION RETIREMENT FUND, :
:

Plaintiffs, :

- against - :

BAG SPECIALIST, INC., :

Defendant. :
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07 Civ. 6188 (RMB) (MHD)

ORDER

I. Background

On or about September 2, 2008, United States Magistrate Judge Michael H. Dolinger, to whom the question of damages in this default proceeding had been referred, issued a thorough Report and Recommendation ("Report"), recommending, among other things, that the Court award Plaintiffs "(1) \$108,653.00 in unpaid contributions for May 2006 through July 2007, (2) \$19,227.21 in interest on the unpaid 2006–2007 contributions, (3) \$21,730.61 in liquidated damages, (4) \$98,846.69 in unpaid contributions due from January 2003 through December 2005, plus interest, and (5) \$350.00 in filing costs, or a total of \$248,807.51." (Report at 10.)

The Report advises that "the parties shall have ten (10) days from this date to file written objections to this Report and Recommendation." (*Id.* at 11.) To date, neither party has filed objections to the Report.

II. Legal Standard

In reviewing a magistrate judge's report and recommendation, the court may adopt those sections to which no objections have been made and which are not clearly erroneous or contrary

to law. See Fed. R. Civ. P. 72(b); Thomas v. Arn, 474 U.S. 140, 149 (1985); Santana v. United States, 476 F. Supp. 2d 300, 302 (S.D.N.Y. 2007). A district judge may accept, reject, modify, in whole or in part the findings and recommendations of the magistrate judge. See Santana, 476 F. Supp. 2d at 302; Deluca v. Lord, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994), aff'd, 77 F.3d 578 (2d Cir. 1996).

III. Analysis

The facts and procedural history set forth in the Report are incorporated herein by reference.

Having conducted a review of the Report and applicable legal authorities, the Court finds that the Report is not clearly erroneous and, in fact, is in conformity with the law. See Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991).

Judge Dolinger properly “rel[ie]d] on the factual allegations of [Plaintiffs’ amended complaint] as well as the [declaration, dated July 3, 2008, by Floyd Zaremba, a field audit supervisor of the administrator of the funds],” in calculating Plaintiffs’ damages. (Report at 3.) See Mason Tenders Dist. Council Welfare Fund v. City Stone, Inc., No. 01 Civ. 3568, 2006 WL 41285, at *1 (S.D.N.Y. Jan. 9, 2006) (quoting Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997)).

Judge Dolinger correctly proposed an award for “[unpaid contributions], interest, liquidated damages and costs.” (Report at 3.) Because Defendant has been adjudged in default for delinquent contributions within the meaning of Section 1145 of the Employee Retirement Income Security Act of 1974, (“ERISA”), “the court shall award [Plaintiffs], (A) the unpaid contributions, (B) interest on the unpaid contributions, (C) . . . liquidated damages . . . not in excess of 20 percent . . . of the [unpaid contribution], (D) reasonable . . . costs of the action . . .

and (E) such other legal or equitable relief as the court deems appropriate.” Unite Nat. Retirement Fund v. Fairbrooke Co., Inc., No. 04 Civ. 2354, 2006 WL 770487, at *2 (S.D.N.Y. Mar. 23, 2006) (quoting 29 U.S.C. §§ 1132(g)(2)(A)–(E)); see also Trs. of Mason Tenders Dist. Council Welfare Fund v. Stevenson Contracting Corp., No. 05 Civ. 5546, 2008 WL 3155122, at *5–8 (S.D.N.Y. June 19, 2008).

IV. Conclusion

For the reasons stated herein and therein, the Court adopts the Report [Dkt. # 34] in its entirety. The Clerk of the Court is respectfully requested to enter judgment for Plaintiff in the amount of \$248,807.51.

The Clerk is further directed to close this case.

Dated: New York, New York
October 20, 2008

A handwritten signature in black ink, appearing to read 'RMB', is positioned above a horizontal line.

RICHARD M. BERMAN, U.S.D.J.